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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL HUNT; MATTHEW DOWD, ) Case No. CV 06-04691 DDP (SSx)  
Plaintiffs, )  
) **ORDER GRANTING DEFENDANT'S MOTION  
TO DISMISS**  
v. )  
)  
CITY OF LOS ANGELES, a ) [Docket No. 195]  
municipal corporation, )  
Defendant. )  
\_\_\_\_\_ )

Presently before the court is Defendant City of Los Angeles' Motion to Dismiss Plaintiffs' Remaining Claims for Lack of Standing and Mootness ("Motion"). Having reviewed the parties' moving papers and heard oral argument, the court grants the Motion and adopts the following Order.

**I. BACKGROUND**

Plaintiffs Michael Hunt ("Hunt") and Matthew Dowd ("Dowd") (collectively, "Plaintiffs") filed this action against Defendant City of Los Angeles ("City") on July 27, 2006, challenging the constitutionality of various Los Angeles Municipal Code ("LAMC") sections that are no longer in effect. The challenged ordinances

1 included two versions of LAMC § 42.15, as well as LAMC § 63.44.

2 On January 14, 2009, the court issued an order ("Order")  
3 granting in part and denying in part Plaintiffs' and Defendant's  
4 Cross-Motions for Summary Judgment. Relevant here, the court held  
5 that the 2004 version of § 42.15 was unconstitutionally vague. The  
6 court also expressly declined to address § 63.44 in the Order,  
7 because Plaintiffs had asserted at oral argument that "their suit  
8 center[ed] on" and they were "primarily challenging the two  
9 versions of § 42.15." Hunt v. City of Los Angeles, 601 F. Supp. 2d  
10 1158, 1160-61, 1161 n.1 (C.D. Cal. 2009). The parties then  
11 proceeded to a jury trial on damages, in February 2009. The jury  
12 returned a verdict in favor of Hunt for \$264,286, and judgment was  
13 entered on April 23, 2009.

14 In May 2009, the City appealed, and Plaintiffs cross-appealed,  
15 the judgment to the Ninth Circuit. On March 22, 2011, the Ninth  
16 Circuit issued an opinion affirming this court's findings as to §  
17 42.15. The Circuit found, however, that Plaintiffs' assertions at  
18 summary judgment did not establish an abandonment of their claims  
19 as to § 63.44. The Circuit therefore remanded for this court to  
20 address § 63.44 in the first instance. See Hunt v. City of Los  
21 Angeles, 638 F.3d 703, 718-19 (9th Cir. 2011).

22 On November 14, 2011, this court held a hearing on the remand  
23 order, and provided the City until January 13, 2012 to file a  
24 motion as to standing. The City filed this Motion, asking the  
25 court to dismiss Plaintiffs' § 63.44 claims for lack of standing  
26 and mootness. Plaintiff Dowd has since stipulated that all issues  
27 in this case pertaining to him were resolved by the Ninth Circuit's  
28 decision. Plaintiff Hunt opposes the City's Motion, but agrees

1 that his only potential claim under § 63.44 is for damages, since  
2 the ordinance was repealed in 2005 - before this action was filed.

3 **II. DISCUSSION**

4 Based on the complete record, the court concludes that  
5 Plaintiffs voluntarily abandoned any claim for damages under §  
6 63.44 after the summary judgment proceedings. Contrary to  
7 Plaintiff Hunt's contentions, the court never made any finding or  
8 ruling as to abandonment. Therefore, nothing precluded Plaintiffs  
9 from bringing their § 63.44 claims before the jury. Plaintiffs,  
10 however, failed to do so. Having elected not to proceed with these  
11 claims, Plaintiffs cannot now revive them by demanding a second  
12 trial - which would impermissibly allow Plaintiffs to split their  
13 claims and seek overlapping damages.

14 To elaborate, the court made no finding or ruling as to  
15 abandonment in its Order on summary judgment. Instead, the court  
16 simply declined to address § 63.44 in that Order, based on  
17 Plaintiffs' representations. See Hunt, 601 F. Supp. 2d at 1161 n.1  
18 ("[A]t oral argument, Plaintiffs explained that they are primarily  
19 challenging the two versions of § 42.15. Accordingly, this Order  
20 does not address § 63.44." (emphasis added)); see also id. at  
21 1160-61 ("Because Plaintiffs agreed at oral argument that their  
22 suit centers on two versions of § 42.15, the Court does not address  
23 the challenged provisions of LAMC 63.44(B)." (emphasis added)).

24 Nor did the court make any finding or ruling as to abandonment  
25 at the summary judgment hearing. During oral argument, Plaintiffs  
26 stated that they were arrested under § 42.15, but threatened under  
27 both § 42.15 and § 63.44. In response, the court stated that it  
28 would need to review the sufficiency of Plaintiffs' declarations as

1 to the alleged threats. Plaintiffs then insisted, however, that  
2 the focus of the case was really § 42.15. Plaintiffs therefore  
3 asked the court to instead move forward and rule on § 42.15, so  
4 Plaintiffs could proceed with a jury trial on damages. The court  
5 did not comment on Plaintiffs' representations, beyond confirming  
6 them with Plaintiffs.<sup>1</sup>

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8 <sup>1</sup> In full, the exchange was as follows:

9 PLAINTIFFS: Well, we have shown clearly in the sworn  
10 declarations of both plaintiffs, and as explained in their  
11 depositions taken by the City, Mr. Hunt was charged under  
12 42.15 and arrested. He was arrested on 24 occasions under  
13 42.15. Mr. Dowd was arrested under 42.15 on three  
14 occasions. That is set forth in the sworn declarations  
15 submitted in this motion.

16 COURT: All were 24.52?

PLAINTIFFS: 42.15

COURT: I'm sorry, 42.15.

PLAINTIFFS: And Mr. -- both parties were threatened as  
well under 42.15 and 63.44.

COURT: When you say "threatened," against what  
specifically? That shows the statutes. I have to go back  
and look at your declarations and see if you addressed  
those.

PLAINTIFFS: The focus of the case is 42.15. It's  
crystal clear.

THE COURT: Your clients -- really the focus of their  
case is on 42.15?

PLAINTIFFS: Yes.

COURT: In terms of what they are seeking by way of  
damages?

PLAINTIFFS: Right. And our goal today with now joint  
cross-motions to summary judgment is to say that on those  
constitutional defaults your Honor can issue a ruling that  
the statute is unconstitutional for all of the grounds that  
have now been laid out in our Motion and Opposition of the  
City's Motion. We have a trial date of January 21st, if I  
recall correctly, and that's when we want to prove up  
damages based on those arrests and the other forms of  
damage that the plaintiff suffered. So my goal was to get,  
with a lot of effort and legal proceedings that both sides  
have gone through, get that declaration for prior  
restraint, lack of narrow tailoring, vagueness, all of  
those grounds that's fully set forth in our motion, get  
that declaration, and then we're only limited to a short  
trial in January on damages. (Mot., Ex. 2 at 5-6.)

1       Because the court did not resolve Plaintiffs' § 63.44 claims  
2 on summary judgment, the claims obviously remained in the case for  
3 subsequent motions or trial. Plaintiffs, however, never asked the  
4 court to address § 63.44 - whether through a second motion for  
5 summary judgment, motion for a ruling, or motion to reconsider.  
6 Nor did Plaintiffs raise § 63.44 in any manner during their jury  
7 trial. Rather, the jury instructions and verdict form - prepared  
8 jointly by the parties - addressed only a single ordinance: the  
9 2004 version of § 42.15. (See, e.g., Docket No. 173: Rep.'s Tr. of  
10 Jury Trial Proceedings, Feb. 4, 2009 ("Trial Tr."), at 33-45 ("To  
11 help you follow the evidence, I will give you a brief summary of  
12 the positions of the parties. In this case, plaintiff Michael Hunt  
13 challenged a 2004 Los Angeles City Ordinance which regulated  
14 vending on the Venice Beach Boardwalk."). Likewise, Plaintiffs  
15 repeatedly clarified during witness examination and at closing  
16 argument that the case involved only § 42.15, and that all of  
17 Plaintiffs' damages arose from that section. (See, e.g., Trial Tr.  
18 at 77 ("Everything that happened that has been a function of the  
19 damage suffered by Mr. Hunt arose out of the Ordinance 4215 [sic]  
20 which the Court has found to be unconstitutionally vague.")).

21       In sum, because the court never made any finding or ruling as  
22 to abandonment, Plaintiffs had every opportunity to proceed with  
23 the § 63.44 claims alleged in their Complaint. The record  
24 establishes that Plaintiffs elected not to proceed with these  
25 claims, and instead went forward with a full jury trial where they  
26 addressed only § 42.15. It was therefore entirely Plaintiffs'  
27 decision - not the court's - to abandon their § 63.44 claims.  
28 Further, to allow Plaintiffs to now move forward with a claim for

1 damages under § 63.44 would constitute impermissible claim  
2 splitting. Relatedly, Plaintiffs' prior evidence to the jury on  
3 the arrests and other harm suffered did not distinguish at all  
4 between the various LAMC sections. A second damages award -  
5 following a second trial on damages - would therefore doubly  
6 compensate Plaintiffs for some, if not all, of the same harms.  
7 Again, only damages are in dispute, since § 63.44 was suspended  
8 before this action was filed.

9 **III. CONCLUSION**

10 For all of these reasons, the court grants Defendant's Motion  
11 and dismisses this action.

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13 IT IS SO ORDERED.

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16 Dated: March 7, 2012

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DEAN D. PREGERSON  
United States District Judge